IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5596 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJUJI POPATJI RATHOD

Versus

SUPERINTENDING ENGINER

Appearance:

1. Special Civil Application No. 5596 of 2001

MR DJ BHATT for Petitioner No. 1

MR I.M. PANDYA, A.G.P. for Respondents No. 1-5

NOTICE SERVED BY DS for Respondent No. 5

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 12/12/2001

ORAL JUDGEMENT

Rule. Service of rule is waived by learned A.G.P Shri I.M. Pandya for the respondents. Looking to the

facts of the case and in view of the request of the learned advocates, the petition is finally heard today.

The petitioner has been aggrieved by an order dated 30th June, 2001 passed by the Superintending Engineer, Mechanical Circle (Roads and Buildings), Ahmedabad whereby the petitioner has been reverted from the post of Work Charged Fitter to the post of Temporary Store Attendant.

Learned Advocate Shri Bhatt, appearing for the petitioner has submitted that the petitioner had joined the office of the respondents as a labourer on 25th October, 1972. On 22nd February, 1980 he was taken up on Work Charged establishment and thereafter by an order dated 20.10.1984 he was promoted as Work Charged Fitter with effect from 22.02.1980. It has been submitted by him that persons junior to the petitioner in cadre of Work Charged Fitter had been promoted to the post of Temporary Fitter and, therefore, the petitioner had made a grievance before the higher authorities about his non-promotion but instead of giving promotion to the petitioner to the post of Temporary Fitter, by the impugned order dated 30th June, 2001, the petitioner has been reverted to the post of Temporary Store Attendant. It has been submitted by him that the impugned order of reversion has been passed without hearing the petitioner and therefore the said order is bad in law. It has been further submitted by him that there is no justifiable reason for reverting the petitioner to the post of Temporary Store Attendant.

It has been submitted by learned A.G.P. Shri. Pandya, that the petitioner was formerly working as a Temporary Store Attendant and though he could not have been promoted to the post of Work Charged Fitter he was given promotion because of some mistake. By virtue of the impugned order, the mistake committed earlier has been rectified. It has been therefore submitted by him that the petitioner cannot make any grievance with regard to the reversion and the petitioner has no right to take any undue advantage of the mistake committed by the respondent authorities.

It has been however admitted by the learned A.G.P. that in fact the petitioner had not been heard before the impugned order dated 30th June, 2001 was passed. He has relied upon the averments made in the affidavit-in reply filed by Shri V.S. Patel, Executive Engineer, Central Work Shop Division (Road & Building), Ahmedabad, wherein it has been stated that the petitioner

was represented by a Union, and the Union was heard before the impugned order had been passed.

I have heard the learned Advocates and looking to the facts of the case, in my opinion the impugned order dated 30th June, 2001 is neither just nor legal.

It is not in dispute that the petitioner was not heard before the impugned order of reversion was passed. Submission made by learned A.G.P. Shri Pandya is that the petitioner was represented by a Union and, therefore, the Union was heard before the order of reversion was passed, is not correct. Upon perusal of the contents of the impugned order dated 30th June, 2001, it is very clear that the petitioner had made a grievance that some persons, junior to the petitioner had been promoted to the post of Temporary Fitter. As the petitioner was not promoted, the petitioner and other similarly situated employees had made a grievance through the Union. A representative of the Union was heard by the concerned respondent on the subject of non promotion of the petitioner and other similarly situated persons and the Union representative not heard on the subject of reversion of the petitioner.

Upon perusal of the impugned order, no where it has been stated that the petitioner was heard before the said order of reversion had been passed. Moreover, learned A.G.P. Shri Pandya was asked whether any show cause notice was issued to the petitioner calling upon him to show cause as to why he should not be reverted. Such a notice ought to have been given to the petitioner before the final order with regard to the reversion is passed. Learned A.G.P. Shri Pandya was unable to show that such a show cause notice had ever been issued to the petitioner. Moreover, upon perusal of the impugned order dated 30th June, 2001 it dose not appear that such a show cause notice had been issued to the petitioner.

Learned A.G.P. Shri. Pandya has also submitted that the petitioner ought not to have been promoted to the post of Work Charged Fitter but due to a mistake, he was promoted to the post of work charged fitter and as by virtue of the impugned order the mistake committed earlier has been rectified, it was not necessary to hear the petitioner. In my opinion, even if the petitioner was promoted because of mistake, before passing the order of reversion, the petitioner ought to have been given an opportunity to represent his case. As the petitioner was not heard before passing the impugned order, in my opinion, the principles of natural justice have been

violated and, therefore, the impugned order is in violation of the principles of natural justice and, therefore, such an order cannot be sustained.

At the time of making the submissions, learned Advocate for the petitioner has also made a grievance that in fact the petitioner ought to have been promoted to a higher post but the petitioner has been reverted. If the petitioner feels that he ought to have been promoted to the post of Temporary Fitter, it would be open to him to make a representation or to take appropriate legal action for establishing the said right of promotion.

For the reasons stated hereinabove, the impugned order dated 30.6.2001, so far as it reverts the petitioner from the post of Work Charged Fitter is concerned, is quashed and set aside. Rule is made absolute to the above extent with no order as to costs.

(A.R. DAVE,J.)

siji